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ABSTRACT

Recent studies suggest unionization constrains administrators, impedes reform, and makes achieving accountability difficult. Interviews with 11 principals and analysis of the collective bargaining agreement between the New York City Board of Education and the United Federation of Teachers indicates rigid work rules prevent the flexibility and autonomy schools require to meet educational missions. The contract complicates transfer decisions by favoring veteran teachers, a problem not addressed in recently negotiated School-Based Options plans. Few teachers are disciplined because tenure provisions impede termination, and protocols discourage and delay disciplinary actions. The contract places teacher seniority ahead of administrator judgment in assignments and relieves teachers of noninstructional obligations. Rigid rules governing work hours and conditions undermine teamwork by not requiring teacher meetings with students and administrators, limiting class size, and specifying preparation periods. The most recent contract extends union power and perpetuates divided authority and unclear lines of responsibility, stalemating reform. Recent school leadership teams reflect these unfortunate trends and further undermine principal authority. (TEJ)

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The New York City Teachers' Union Contract: Shackling Principals' Leadership

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"Enhanced student achievement based upon high standards and expectations must be the driving force behind every activity of New York City public schools. To accomplish this, we must reinvent schools so that decision making is shared by those closest to students, including parents, teachers, administrators and other stakeholders. Layers of bureaucratic impediments must be peeled away so that flexibility, creativity, entrepreneurship, trust and risk-taking become the new reality of our schools. Before the millennium, the factory model schools of the 1900s must make way for the child-centered schools of the next century."

> —First paragraph of the Agreement between the Board of Education of the City School District of the City of New York and United Federation of Teachers, Local 2, American Federation of Teachers, AFL-CIO

"If you try to follow the contract to the letter and try to run a school that puts kids first, you can't."

> —New York City Intermediate School Principal

The contract between the Board of Education of New York City and the United Federation of Teachers is 204 pages long. It covers many matters of concern to teachers who work in the city's schools: work loads, compensation, assignments, evaluation, promotion, pension and retirement programs, dismissals and layoffs, to name only some. In consequence, it has a substantial impact on the way education is conducted in New York City.

This is hardly a novel or controversial observation. Supporters of teacher unions as well as their critics agree that unions wield great influence over education. In less than a half century, teachers have risen from being under-paid, under-valued "semi-professionals" to becoming the most powerful voice in education, key leaders within the larger labor movement, and prime movers in regional and national politics. To a large degree, this emergence from obscurity to prominence, from being exploited, sympathy-invoking martyrs to respected agents at the bargaining table and in the halls of government, is the result of the unionization of teachers, a phenomenon common in virtually every developed nation on earth.[1]

Consensus on the importance of teacher unions gives way to disagreement, however, on the question of whether unionization and collective bargaining have helped or harmed public education. Not surprisingly, teacher unions take the position that they have been beneficial. In the view of union leaders, the policies that teachers have sought through collective bargaining are merely those that an enlightened school administration would recognize as in the best interests of public education. Union goals are, first, to achieve fundamental fairness for its members, and second, to improve public education by promoting reforms that the Board would not otherwise have adopted on its own.[2] Contract provisions forestall autocratic administrators and misguided school boards from imposing working conditions that would prevent teachers from performing at their best, demoralize the work force, and make it difficult to attract capable individuals into teaching. More recently, with the advent of the "new unionism" espoused by the leaders of the National Education Association and the American Federation of Teachers, collective bargaining is seen as the primary mechanism ensuring teachers a collaborative role in the operation of the school system, collaboration that is ultimately in the best interests of students.

This portrayal of union activities is clearly self-serving. However, it should not be dismissed out of hand. In the first place, it is true that the contract in New York City (like teacher contracts elsewhere) contains many provisions that attempt to correct past abuses. Moreover, in several respects the current contract attempts to ameliorate some of the excesses of the old unionism. The contract does create more opportunities for collaboration. Some of it will likely be beneficial to students.

On the other hand, several recent studies suggest that teacher unionization has not had an altogether benign influence on public education. Studies of the Boston and Milwaukee school systems and a review of teacher contracts in Michigan reveal significant ways in which collective bargaining has tied the hands of administrators, impeded reform, and made it more difficult to restore accountability for educational achievement.[3]

This report continues that line of investigation by examining the impact of the United Federation of Teachers contract on the operation of New York City public schools. It does not attempt to consider all aspects of the contract. Rather, it focuses on one question: does the contract pose significant impediments to the efforts of school administrators to deliver educational services in their schools? Is it true that there is no fundamental conflict between the provisions of the contract and the policies that an enlightened administration would follow anyway? Or has the contract become an obstacle, a roadblock in the way of needed reforms?

How This Research Was Conducted

A close reading of the collective bargaining agreement between the Board of Education and the United Federation of Teachers (UFT) turns up numerous provisions that constrain administrators. This is, of course, only to be expected, as it is the very purpose of a contract to restrict managerial prerogatives. But there is reason to be concerned about the nature of these restrictions. The UFT contract bears a strong resemblance to collective bargaining agreements in other urban systems that have been judged to have a negative impact on education performance. Among the features of these contracts that cause concern are excessively rigid work rules that deprive schools of the necessary autonomy and flexibility to carry out their educational missions, and numerous obstacles in the form of due process requirements that make it difficult to terminate incompetent teachers.

In addition to a study of the contract, this research draws on interviews with principals who work in the city's schools. Although the number of participating principals was small (11), they represented all levels of the system (elementary, intermediate and high school) as well as both traditional and alternative schools. These interviews served two useful purposes. First, they provided a check on conclusions based on a reading of the contract. The contract is not a transparent document. It is filled with references to complex work rules and practices that are not easily understood without the assistance of individuals involved in the day-to-day operation of the schools. Second, these interviews provided specific examples of the way that administrators' efforts to improve the educational environment for students are frustrated by provisions in the agreement. The interviews therefore furnish context for viewing the contract and insight into its impact on schools that is difficult to glean from the contractual language alone.

Clearly, eleven interviews do not constitute a survey of principals' attitudes toward the contract. No claim is made that the views expressed here are representative of administrators throughout the school system. Indeed, the way that principals were selected for this study virtually ensures that they are not representative.[4] All of them have been involved in school reform, promoting changes within their buildings and throughout the district. Thus they are more likely to be representative of an "activist" set of principals interested in improving the way education is conducted in the city than of the average or typical administrator.

Had more administrators had been consulted, it is unlikely that the results of this research would have been very different. In the first place, this research is primarily a study of the contract, not of principals' attitudes. The attitudes of the eleven interviewees towards the contract and the teachers' union differed considerably, but their portrayal of the impact of the contract on day to day operations was quite consistent. The interview

process ended when it became apparent that further discussions would be unlikely to reveal new areas of concern, but would instead furnish only more examples of problems already identified. Second, while a wider sample of principals might have been more typical of administrators throughout the school system, the goals of this research were better served by limiting interviews to principals with a strong interest in education reform. Significant changes in the contract will not occur overnight, but rather in an incremental manner. Reform-oriented principals will play a key role in this process by demonstrating which changes are of greatest value. New York's new charter school law, for example, does not require charter schools serving fewer than 250 students to be unionized. The issues raised by the principals interviewed for this study indicate what is at stake as charter school faculties choose whether to unionize.

Principals' concerns tend to focus on matters close to their immediate responsibilities. These discussions therefore dealt with such questions as who works in a school, what tasks they are assigned, how to deal with teachers who perform poorly, and how faculty and administration can work more cooperatively. Principals rarely commented on provisions of the contract that dealt with matters beyond their control, such as salaries. In keeping with their concerns, this paper is also limited to aspects of the contract that constrain day-to-day decision making at the school level.

In the final stage of this research, the Board of Education was approached for statistical information to verify claims made by principals. In some instances these claims could not be corroborated, indicating that principals are not always well informed about the provisions of the contract or the impact that it has on the school system. Interviews with several officials at the Board also provided additional insight and perspective into the operation of the system and the role of the contract.

As noted above, the agreement between the Board of Education and the UFT covers a wide range of personnel and educational practices. It is not, however, the only source of rules and regulations affecting the city's schools. The Board of Education has its own by-laws and directives. State education law also governs certain key personnel decisions. Principals themselves do not always know whether restrictions on managerial prerogatives are due to language in the contract, to regulations issued by the board, or to legislation.

Although this report concerns the contract, in some instances the operation of the contract can only be understood within a broader context, including the policies of the Board and state education law. In part this is because the contract is not the sole device by which the UFT presses its agenda. The union has considerable political influence with the Board and the state legislature. Full appreciation of contract language at times requires knowing how specific provisions of the bargaining agreement are complemented or qualified by directives and circulars issued by the board and by acts of the legislature.

There is a second reason why there is no hard-and-fast line between the collective bargaining agreement and the by-laws and regulations of the Board of Education. The contract subsumes many of the board's own policies in an article entitled "Matters Not Covered," quoted here in full.

> With respect to matters not covered by this Agreement which are proper subjects for collective bargaining, the Board agrees that it will make no changes without appropriate prior consultation and negotiation with the Union.
>
> The Board will continue its present policy with respect to sick leave, sabbatical leaves, vacations and holidays except insofar as change is commanded by law.
>
> All existing determinations, authorizations, by-laws, regulations, rules, rulings, resolutions, certifications, order, directives, and other actions, made, issued or entered into by the Board of Education governing or affecting salary and working conditions of the employees in the bargaining unit shall continue in force during the term of this Agreement, except insofar as change is commanded by law.[5]

As a result, on a wide range of issues it is immaterial whether principals are constrained by provisions of the contract or by directives of the Board. The latter are effectively as much a part of the contract as articles that were the specific subjects of negotiation.

Staffing

When discussing the problems that the contract poses, principals return to one issue again and again: under the terms of the contract, they are unable to control who teaches at their schools.

This is not to say that principals lack any say in staffing decisions. By and large principals have a considerable amount of discretion in hiring teachers new to the school system. As a result, new teachers tend to share the principal's educational priorities and beliefs. This is not true, however, of veteran teachers in the system who can be forced on the school for one of three reasons: (1) they transfer into the school under the UFT's transfer system; (2) they are "excessed in" when jobs are eliminated in other schools in the system; (3) they are moved into the school when the system is downsizing and teachers are being laid off.[6]

The Problems with Seniority-Based Transfers and Excessing

Under the UFT transfer system, principals post vacancies at their schools during spring "reorganization" when staffing and assignment decisions are made for the following school year. Teachers elsewhere in the system who hold the appropriate license(s) and have received satisfactory ratings for three consecutive years, including the year of transfer, may apply for the position.[7] The most senior applicant is awarded the job.

"Excessing" occurs when schools lose positions and thereby find themselves with a surplus of faculty. If not enough teachers volunteer for reassignment to other schools, teachers with licenses in the fields or grade levels that are in surplus are removed from the school in reverse order of seniority, although this basic procedure is subject to an elaborate set of rules that seek to minimize certain kinds of disruptions (e.g., in special education) and to protect teachers who are licensed in subjects other than the ones they are currently teaching. Where possible, excessed teachers are placed in vacancies within the same district. If there are no vacancies within the district, they are placed elsewhere within the system. If there are no vacancies within the system, the rules for excessing cease to apply and layoffs take place instead following procedures established by state law. These rules permit senior teachers to bump junior teachers with the same licenses.

In a typical year some 500-800 teachers transfer under the seniority-based system.[8] This averages to less than one per school, a figure that may not appear particularly high. Nonetheless, the principals interviewed for this study held the transfer and excessing rules responsible for some of their biggest problems. One termed a principal's inability to choose his staff the single worst feature of the contract. Principals who have not had to accept incoming transfers are quick to acknowledge their good fortune. Some have resorted to various stratagems to scare off teachers they don't want. One, for example, has asked what prospective transfers would do if a student brought a gun to class. Another has consciously cultivated a reputation of being a "bitch to work for." However, not every principal is able to dissuade unwelcome teachers from transferring in. In fact, the contract does not even assure them of the opportunity to try, as teachers who transfer into a school are not obliged to meet with the principal before the first day of the school term. As one principal noted, "I won't necessarily have the chance to discourage someone I don't want, or even to find out if it's someone I will want or not."

In the past, principals have protected positions from the transfer system by withholding information on vacancies. For example, teachers who were planning to retire were encouraged to wait until after the spring reorganization to submit formal notice. By this and similar devices, principals avoided posting their vacancies until the transfer period was over, at which point they could fill these jobs with teachers of their own choosing. These methods for circumventing the transfer system were unpopular with the UFT, which subsequently negotiated into the contract language to close this loophole, at least in part. Under the current contract, half the vacancies in a school must be opened to the transfer system. (The principal can fill the other half with teachers of his or her choosing.)[9] Moreover, positions that were not listed as vacant the previous spring are treated the following spring as if they were still vacant. Thus, unless such a position is among the 50 percent that the principal is able to protect from the transfer system, senior teachers from elsewhere in the system are permitted to bump the instructor who was hired in the meantime from the job.

The transfer system interferes with efforts to build an effective instructional team. Ironically, successful principals are most likely to be penalized. Many teachers are eager to transfer into schools that seem safer and better managed than those in which they have been working, even if they are indifferent to innovations that the principal and other faculty are enthusiastic about. Their unwillingness to cooperate dampens morale and makes it harder to carry out improvements in the instructional program. Still worse are the ineffective teachers who are passed from school to school rather than terminated, a process characterized by one principal as a game of "pass the lemon." As principals have noted, it takes only one or two of these teachers to poison the atmosphere in an entire school.

School-Based Options Don't Solve the Problems

Dissatisfaction with the UFT transfer plan and the obstacles it poses to educational reform at the school level were recognized when the current contract was negotiated. As a result, an alternative program was developed, the School-Based Options transfer and staffing plan, under contract language that allows individual schools to

substitute local arrangements for some of provisions of the bargaining agreement (through the exercise of "school-based options"). Under the SBO transfer and staffing plan, a school may create a personnel committee to select staff for all vacant positions. This committee establishes criteria for filling vacancies based on instructional needs, determines the process for recruiting teachers, conducts interviews, and makes final hiring decisions.[10] This committee is permitted to give precedence to non-senior applicants if their qualifications warrant it.

> The personnel committee will select the most experienced qualified applicant of those candidates who apply for vacancies advertised under the transfer component of the SBO transfer and staffing plan. However, a less experienced applicant may be selected if the committee determines that the applicant possesses extraordinary qualifications.[11]

There were high hopes for this measure when it was introduced. The press and other local media interpreted implementation of the SBO transfer and staffing plan, along with other school-based options, as signs of a new collaboration between the Board of Education and the UFT. The union pointed to this provision of the contract to answer critics who claimed that the union's rigid position on personnel matters was an impediment to reform. The contract itself contained an unusual statement boosting the reform:

> It is our joint expectation that by the final year of the agreement all schools will have personnel committees and will receive the training necessary to undertake the process of staffing their schools.[12]

These words were written in 1995. The contract is now in its third year (1998-99). The results have not justified this initial burst of optimism. Of the 1136 schools in the system, 150 use personnel committees under the SBO transfer and staffing plan. A year ago there were 138, and before that about 120.[13] Although these numbers suggest slow but steady progress, the apparent trend is deceiving, as many of the schools now using the plan are doing so for the first time. Fewer than half of the schools using the plan in 1998-99 did so the year before. Clearly, many of the schools that tried it have subsequently reverted to the old system.

Several factors appear to be responsible.[14] First, service on the personnel committee is voluntary. Teachers are not compensated for a job that makes considerable demands on their time. Principals have also remarked on the cumbersome process. According to one, where it formerly took 20 hours to hire four or five persons, it now takes upward of 100. In some schools that initially embraced the SBO transfer and staffing plan, teachers and administrators appear to have burned out.

In some cases principals have been disappointed by the results. Fear of unsatisfactory outcomes has dissuaded other principals from pursuing the option in the first place. A majority of the members of the personnel committee must be teachers appointed by the UFT chapter leader. Principals have commented that they are unwilling to cede control of these decisions to such a committee, particularly when relations with the UFT chapter leader are not good. The committee must also include parents selected by the school's parent association. As principals have noted, teachers and parents have not had the kind of training or experience that prepares them to look at the needs of the school as a whole when making personnel decisions.

In several ways, the SBO transfer and staffing plan actually diminishes the principal's authority over hiring. Whereas the contract allows principals to protect 50 percent of their vacancies from the traditional transfer system, a school that follows the SBO plan must do so for all vacancies. Thus the personnel committee makes all hiring decisions, including the selection of new teachers that was formerly under the sole control of the principal. Finally, although the SBO transfer and staffing plan allows the personnel committee to hire less experienced teachers whose qualifications are "extraordinary," these decisions can be grieved and taken to arbitration by senior teachers who are turned down. According to the Board of Education, about 30 schools were taken to arbitration last year. Although "only a handful" of decisions were overturned, these grievances add to the work involved and to principals' uncertainty about the outcome.

Finally, even where the SBO transfer and staffing plan is working well, it does not protect participating schools from excessing and layoffs, the effects of which can be worse than transfers. Such a case arose in one of the city's alternative high schools that had been among the first to implement a SBO transfer and staffing plan. The teacher who was excessed in had no interest in the school's innovative instructional program, which involved interdisciplinary team teaching, and wished only to be permitted to teach her class in the traditional way. The personnel committee protested her assignment to the school. Teachers and parents wrote letters to the union and to the Board of Education. In the words of the principal, "It was a nightmare. It totally undermined the SBO process. Everyone was up in arms."

The final disposition of this case illustrates the possibilities for circumventing the system under the right circumstances, as well as the high cost of doing so. A short-term solution was found when the principal obtained discretionary funds from the district superintendent to hire another teacher for the regular classroom. The excessed teacher was assigned to the school's resource room. The principal then began to document her failure to fulfill her duties, a task made easier inasmuch as the school was one of the system's alternative high schools, with additional faculty responsibilities stipulated in a memorandum of understanding between the staff and the Board of Education. (For example, teachers were expected to attend two weeks of summer meetings to plan curricula). In the principal's words: "I started to put the heat on her." At the same time, he sought the union's assistance in arranging a transfer. Even so, the teacher turned down several offers of other jobs. She was finally persuaded to transfer only when the principal persuaded the Board of Education to finance a sabbatical for her on the understanding that when the sabbatical ended she was to transfer out via the seniority transfer system.

Teacher Evaluation and Termination

State education law grants teachers tenure after five years of continuous service. In New York City, this period is effectively shortened to three years by the contract, which assures teachers who have completed three years of service the same rights of appeal and review guaranteed tenured instructors.[15] In addition, as public employees, teachers are protected against arbitrary dismissal. As a result, tenured teachers enjoy an extraordinary degree of job protection.

How The Contract Impedes Dismissal of Poorly Performing Teachers

Although it is a commonplace that teacher contracts have made it very difficult to fire ineffective instructors, the reasons are not as widely appreciated. The process of dismissing a tenured teacher begins with the documentation of professional misconduct.[16] Typically this means that the principal places letters and memoranda in the teacher's file, on the basis of which the teacher receives an unsatisfactory rating in the annual evaluation. Teachers must be shown all letters and other documents that are placed in their files and are entitled to file a grievance over any item. The first step in the grievance procedure is a meeting at the school between the teacher and the principal. At the teacher's request, the UFT chapter leader at the school may also be present at this meeting. If the grievance is not resolved to the teacher's satisfaction at this time, it can then be appealed to the district level. The superintendent or a designated representative meets with the teacher and union representative and renders a decision in writing. If this decision is not satisfactory, the union may appeal the matter to the Chancellor's level where the case is heard once again and another written decision issued.

If the union is still not satisfied with the outcome, the grievance can then be taken to arbitration provided it involves the application or interpretation of the contract. As specified in Article 22C of the contract, this involves virtually any dispute in which there is disagreement over the facts of the case.

> Grievances involving the exercise of Board discretion under any term of this Agreement may be submitted to arbitration to determine whether the provision was disregarded or applied in a discriminatory or arbitrary or capricious manner so as to constitute an abuse of discretion, namely: whether the challenged judgment was based upon facts which justifiably could lead to the conclusion as opposed to merely capricious or whimsical preferences, or the absence of supporting factual reasons.[17]

After the teacher has exhausted all opportunities to remove material from his file through grievances, he may challenge the unsatisfactory rating itself by filing an appeal with the Office of Appeals and Reviews of the Board of Education. This involves another hearing at which the principal must present the evidence supporting this decision. Certain items are inadmissible. In particular, no evidence on the quality of the teacher's work can be presented from schools where the teacher may have worked previously, including schools within the New York City system.[18] The teacher may be represented by the union and has the right to submit evidence and call witnesses.

If the reviewing officer sustains the principal's rating, the superintendent of the district in which the teacher is employed may refer the case to the Office of Legal Affairs to seek termination of employment. If the Board's lawyers decide there is sufficient evidence to bring the case to trial, it goes to a disciplinary hearing governed by Section 3020-a of the state education law.[19] This is a legal proceeding in which the teacher is represented by attorneys from the UFT and the Board by its own lawyers. The teacher has the right to subpoena and cross-examine witnesses. Teachers who are charged with incompetence have the right (invariably exercised) to have the hearing before a three-member panel of arbitrators; those facing other charges

(e.g., chronic absenteeism) are heard by a single officer. The hearing officer (or panel) renders a decision on the facts of the case and on the penalties or other actions that the Board of Education shall take. Termination is the severest penalty, involving the loss of license. Alternatively, the officer may impose various types of remedial action, including a leave of absence, continuing education or study, counseling or medical treatment. Finally, a teacher who is dismissed in a 3020-a proceeding has the right to appeal to the State Supreme Court under the relevant sections of the civil service law.

Principals contacted for this research agreed that terminating a teacher's employment is a difficult, time-consuming task. Principals speak of the need to establish an iron-clad case, to provide excessive documentation in anticipation that some of the evidence will be successfully challenged. In the words of one, "I need 15 documented screw-ups, because some will be thrown out." Another principal, describing his efforts to remove an emotionally disturbed teacher from his school, displayed a three-ring binder filled with letters and other documentation he had prepared for a 3020-a hearing.

The Contract's Effect: Few Teachers Are Disciplined

The number of tenured teachers who are dismissed through disciplinary hearings is quite small. Between February, 1997, and March, 1998, the Office of Legal Affairs won cases against 17 teachers. Another seven cases were lost, and 33 more resulted in some other outcome, as stipulated by the hearing officer.[20] These other outcomes often represent a kind of "plea bargaining" involving some lesser penalty. For example, teachers may be permitted to resign without loss of license. They may be fined, suspended without pay, or required to take a leave of absence. In some cases teachers must seek remediation (e.g., in the system's Peer Intervention Program).

While these terminations may represent important victories, the number of cases is very small for a school system that employs 68,000 teachers. In part, this is the fault of principals. In a typical year only 400 to 500 teachers in the entire system appeal unsatisfactory ratings.[21] The vast majority of teachers are rated satisfactory. Principals therefore bear much of the responsibility for the fact that many ineffective teachers are permitted to continue working within the district year after year. For this reason, claims that the contract is responsible must be regarded with caution. Such arguments can be self-serving, as principals seek to excuse their own failure as supervisors.

Yet the problem is not solely due to lax administration. As noted above, the principals interviewed for this study tended to be activist, reform-minded administrators. Several had sought, some successfully, to have poor teachers fired. Their testimony on this point is not an effort to scapegoat the contract for their own failings. On the contrary, these are principals who have tried to work within the structure established by the contract, Board of Education policy, and state law to remove unqualified teachers from the classroom. Their comments are particularly useful in understanding why the present system discourages even conscientious administrators from attempting to dismiss poor instructors.

The greatest problem appears to be the time required to carry out frequent classroom observations and document teachers' failings. As one principal flatly stated: "You cannot go

after more than one or two teachers at once. There simply isn't time." This burden is exacerbated by the challenges principals will face from union representatives and attorneys at these hearings. The union's standard position in these proceedings is that the problem is not the teacher but the principal, who has singled out an instructor for unfair, even malicious prosecution. Any inconsistency in the principal's actions will be exploited in an effort to substantiate this claim. As one principal related:

> Suppose I have a teacher who is absent 12 days during the year. I put a letter in her file, which she grieves. At the hearing the union asks: "Did you review everyone's cumulative absences register? Did you send this letter to every single person who was absent ten or more days?"

Other principals made the same point. A principal who wants to dismiss an ineffective teacher cannot scrutinize that teacher's performance to the exclusion of others in the school without giving credibility to charges of harassment. This can add considerably to the time required to document misconduct, particularly in schools where the ratio of staff to supervisors is high. In one of the schools visited for this research, for example, the principal was the sole administrator with supervisory authority, overseeing a faculty of 40 teachers. In these circumstances, it is very difficult to conduct even one formal observation on each teacher every year.[22] As this principal remarked, "I'm limited in what I can do with my time. I have to prioritize. The UFT knows this."

The burden on principals is increased by the expectation that the school system will attempt to remediate problems before seeking to terminate an employee. As one principal observed: "At the same time I am documenting misconduct, I have to make it appear that I'm helping this teacher, or I could be charged with harassment." Even when harassment is not a threat, failure to pursue remediation considerably weakens the Board's case if charges are brought. State education law on 3020-a hearings states:

> In determining what, if any, penalty or other action shall be imposed, the hearing officer shall consider the extent to which the employing board made efforts towards correcting the behavior of the employee which resulted in charges being brought under this section through means including but not limited to: remediation, peer intervention or an employee assistance plan.[23]

Often the Office of Legal Services will not charge a teacher until there is evidence that remediation has been tried and failed.

When hearings begin, principals can be called away from their schools for hours, even days. Substitutes must be found for staff who will be called as witnesses. There is also an emotional cost, as principals can look forward to having their motives and their professional judgment challenged throughout the proceedings. As one principal said: "The process sets you up for personal ridicule by the union." In the words of others: "The Board of Education doesn't show principals how to prepare the necessary documentation. You walk through a legal minefield with no help." "The deck is stacked against you." "You're outmatched."

Legally Required Delays Discourage Disciplining Teachers

Long delays in the process discourage principals from pursuing teachers who will continue to work under their supervision until the legal proceedings have finally ground to a halt. Grievances are one of the main sources of delays. Teachers are permitted to grieve

every item in their files. In past years this played havoc with 3020-a proceedings. It was not unusual for lawyers for the Board of Education to learn in the middle of a case that evidence had disappeared from a teacher's file as a result of a grievance settlement. In recent years, policy has changed: charges will not be filed until all grievances have been concluded. But this in itself represents a delay.

The 3020-a proceedings are also protracted. State education law stipulates that within 15 days of the selection of a hearing officer, a pre-hearing is to be held on each case. Within another 60 days a full hearing is to be scheduled, and within 30 days of that date, the hearing officer is to issue his final report. [24] In reality these deadlines are routinely violated. Four to five months go by before hearings are scheduled. The delay is worst when the charges involve incompetence and a three-member panel must be convened, a circumstance that requires coordinating the schedules of three officers. According to the Office of Legal Services, the average 3020-a proceeding involving charges of incompetence takes 285 days to resolve from the date charges are filed. This, it should be noted, is a substantial improvement over past practice, when such cases often dragged on for several years. However, much of the improvement is due to the aggressive tactics of particular attorneys. If and when they leave their positions, multi-year cases may again become the norm. In the words of the departing Deputy Counsel of the Administrative Trial Unit, "The union's strategy is always to drag these cases out. It is an adage among lawyers: the longer a case goes, the harder it is to try." [25]

Because the costs of terminating a teacher are so high, principals are cautious about initiating these proceedings. There is an understandable tendency to pursue cases that are relatively easy to document, such as those involving teachers who are mentally or emotionally disturbed (particularly if there have been incidents of corporal abuse) or instructors who are chronically absent or late. The hardest are those involving incompetence, a difficult charge to prove, as authorities on education law have noted.

> The ambiguity inherent in teacher evaluation and the job security of most teachers exert a powerful influence on administrators to tolerate the incompetent teacher and to avoid the use of dismissal. Although incompetence is sufficient cause for dismissing a tenured teacher, it constitutes extremely problematic grounds for challenging the tenured teacher's employment contract with the district. Incompetence is a concept with no precise meaning; moreover, there are no clear-cut standards or cut-off points which enable an administrator to say with certitude that a teacher is incompetent. This ambiguity poses a serious problem for administrators because the burden of proof falls on them to demonstrate that a teacher is incompetent. Administrators can never be confident under these conditions that a Commission on Professional Competence or a court judge will uphold their judgment.[26]

As a result, many teachers of questionable effectiveness continue to teach in the system with no effort made to dismiss them. The worst are often assigned to positions as "cluster teachers" (e.g., in music, art, or resource rooms) where the damage they do is limited by the fact that students come into contact with them only once a week. Some receive unsatisfactory ratings and simply go on teaching in the same building. However, because teachers rated unsatisfactory are not allowed to transfer to other schools in the system, there exists an incentive for principals to conceal the full extent of the problem by rating a poor teacher satisfactory in the hope (or with the express understanding) that if they make life sufficiently unpleasant for the teacher in other regards, he or she will eventually move to another school.

Assignments

How The Contract Keeps Principals From Putting The Right Teacher in The Right Job

The contract restricts the way staff are assigned to various functions within the school, significantly limiting administrators' flexibility. Principals lack the authority to assign the right person to the right job at the right time. Instead, they must function within the rules set by the collective bargaining agreement. As elsewhere in that agreement, teacher seniority regularly takes precedence over a principal's professional judgment.

One example arises in the assignment of elementary school teachers to grade levels. Teachers' licenses at the elementary level typically qualify instructors to teach more than one grade. Decisions therefore must be made concerning which teachers are to teach which grades. Each spring teachers submit requests for grade assignments for the coming year. Of those "equally qualified" who seek the same assignment, the request of the more senior teacher is to be honored first.[27] Although the contract is not explicit about the meaning of the phrase "equally qualified," in a grievance hearing there will be a presumption that two teachers who have both been rated satisfactory and who hold the same license are equally qualified. Only if the principal has previously gone to the considerable effort to document his misgivings about the performance of one or the other will he have much hope of prevailing in a grievance hearing.

One of the principals interviewed for this study described his desire to reassign a first grade teacher to the second grade. In his judgment, this teacher had "gone stale" in the first grade classroom, while at the same school there were several strong second-grade teachers who would, in his opinion, have helped to turn her performance around. The teacher, who had more seniority than any other first grade instructors, threatened to grieve the new assignment.

"I would have lost," explained the principal. "The union would have bogged me down with detailed questions. 'How many times did you provide support for this teacher, if you thought she wasn't doing a good job? How many days did you go to her class? What actions did you take there? Did you consult with her afterwards? What was the result of that meeting?'"

Despite the threatened grievance, this particular instance turned out well. The principal was able to work out a compromise by offering the teacher a desired room assignment in return for the move to the second grade. However, it is not always possible to strike such deals. Another elementary school principal, facing a similar problem, also sought to move a first-grade teacher to an upper grade. He was unable to do it: the teacher's seniority posed too great an obstacle.

Restrictions on class and grade-level assignments are not the only ways that the contract can prevent principals from putting the right person in the right job. Many quasi-administrative tasks are carried out by teachers in the school system on what is known as a

"comp-time" basis.[28] Teachers are not paid for assuming this extra work. Instead, their teaching load is reduced, i.e., they are compensated with time. Such positions include deans, crisis intervention teachers, programmers, grade advisors, and attendance coordinators, though this list does not exhaust the possibilities. Each spring the principal meets with the UFT chapter committee to discuss the number and type of compensatory time positions and the basis for filling them. If an agreement is reached via this collaborative process, the principal fills the positions in accordance with the agreement. Individual teachers cannot grieve their assignments. The union can, though presumably it will not if the principal abides by the agreement.

When there is no agreement, positions are filled by the applicant with the most seniority in the school. If there are job-related qualifications for a position, it goes to the most senior applicant who possesses those qualifications. This provision is modified to the extent that an applicant who has not previously had a compensatory time position is to be given precedence over applicants who have.

None of these possibilities permits the principal to fill the position with the individual he deems most qualified. Principals who are on good terms with the UFT chapter leader may be able to reach an agreement that fills key positions with people of his choosing, but even when this process goes well principals will have to compromise and accept decisions that are determined by internal union politics rather than what they judge to be the best interests of the school. When there is no agreement with the UFT chapter committee, the principal will have trouble getting around the seniority provisions of the contract.

This does not stop them from trying. Principals will sometimes write detailed job descriptions to screen out unwanted candidates. As one has said, "This leads to suspicion that there really is no job opening, that the job search is a sham. This breeds cynicism, all because I can't look openly for the right person for a job." These efforts also frequently fail. Assignments are grieved by senior teachers who have been passed over, and principals are told to rewrite the job descriptions in more generic terms.

When assignments are grieved, principals must try to prove that a less senior teacher was better qualified for the position. It is a difficult case to win. Arbitrators will not accept the mere perception that one teacher would be more effective in the position as sufficient ground to override seniority. They seek more tangible evidence in the form of licenses, ratings, and past experience. If there are items in a teacher's file that call into question the teacher's ability to perform well in the position, the principal may be able to prevail at a grievance hearing. But as one principal remarked, "It takes lots of documentation to put a non-senior person in. Usually you won't have done it."

Sometimes this is the supervisor's fault, as the union often points out. In the words of one principal, "The UFT's position is that there are sufficient safeguards in the system. The only impediments are administrators who drop the ball." However, those who suppose that principals should assiduously document every teacher's every failing in order to provide themselves with ammunition for possible future grievances are not taking due account of the complexity of managing a workplace. Principals must overlook many small failings in their staffs in order to

avoid turning their schools into battlegrounds. As several noted, the problem with the contract is not that it forecloses all options, but that it often puts principals in the position of having to decide whether to go to war with their faculties or accept something less than what they deem best for their students. The steps principals would have to take in order to prevail in all potential grievance hearings are so disruptive to workplace harmony that principals frequently decline to take them. Beyond that, there is simply not enough time to document everything the principal learns about teacher's qualifications.

Ironically, sometimes principals find themselves in a position to play the game required by the contract, to the detriment of the teacher. One principal provided a stark example:

> I wrote a job description for a testing liaison person. The job qualifications were grieved as too specific and I had to rewrite the job description using more generic language. To keep out someone who wasn't right for the job, I had to find a letter in the file to explain why they (sic) didn't get it. Essentially, I had to make up a reason based on a past incident, rather than simply express my professional judgment. It's not really fair to the teacher, but the process doesn't allow me simply to say this isn't the best person for the job.

Perhaps the worst situations are those in which compensatory time positions are not created because the wrong people would get the jobs. This can forestall promising innovations. The following story about breaking a large high school up into academies—smaller programs or "schools within a school"—is an example.

> I would like to create academies. For this I need teachers to lead them as deans. These would be comp-time positions. Knowing who would get the jobs, I haven't pursued it; there would go my academies.

The Importance of Supervisory Jobs to Well-Run Schools

Compensatory time positions are not the only tasks teachers have taken on outside the classroom. Traditionally, teachers have been responsible for the supervision of school yards, lunch rooms, hallways and other sites where students congregate outside class hours. Teachers also have been assigned to inventory and distribute books and supplies, to collect money for school milk, lunches, and other purposes and to engage in a variety of other non-teaching activities to keep schools running.

These practices were changed by the current contract, which relieves teachers of such chores (except as described below).[29] These non-instructional tasks are instead to be carried out by aides or administrative personnel, freeing teachers to use this time for more professional purposes. Well-intentioned as this reform is, it offers one more illustration of the way the contract hamstrings administrators while shielding weak faculty.

Teachers are expected to spend the time they would have devoted to these duties in some form of "professional activity." The approved list of such activities includes curriculum development, peer coaching and mentoring, peer computer training, small group and one-to-one tutoring, preparation of instructional materials, participation in school planning committees, community outreach, and enhancing extracurricular programs, to mention only a few. This list is not exhaustive, however. The actual menu of approved activities in any school is determined by the principal and the chapter committee each spring for the

following academic year, with input from the school's parents' association. Disagreements that cannot be resolved at the school are referred to at the district level and, failing a resolution there, to a joint Chancellor-UFT committee.

Once the menu of approved activities has been established for the school, teachers are given the opportunity to state their preferences for positions. Principals are to honor teachers' preferences, favoring the more senior teachers when there are multiple applicants for the same position. At the conclusion of the activity (typically the end of the following school year), teachers are required to submit an activity evaluation report describing what they accomplished and how it contributed to their professional development or student achievement.

Although the contract expressly prohibits teachers from spending their professional activity time on cafeteria duty or yard, bus, and hall patrol, there is one element of flexibility in the agreement. Like other provisions of the contract that govern assignments, this prohibition can be waived under the School-Based Option provisions. Thus, teachers can assume cafeteria duty, for example, but only on the following conditions. First, 75 percent of voting non-supervisory staff (teachers, paraprofessionals, support staff) must approve this waiver the preceding spring. Second, it must be approved by the union and administration at higher levels of the system (a formality). Third, unwilling teachers cannot be assigned to these duties; they must be carried out by volunteers.[30] The SBO can also be used to recreate compensatory time positions that would otherwise be eliminated by the contract's language on non-instructional activities.[31]

At the time principals were interviewed for this research, the school system was in its second year of coping with the new rules. In the first year there had been considerable turmoil as schools scrambled to find aides and administrators to assume tasks formerly carried out by teachers. By the second year, this chaos had subsided. Nonetheless, principals expressed several concerns about the new system. For various reasons, the school aides who had been hired were not satisfactory substitutes for teachers. In some cases, aides lacked the training to supervise large groups of children. They tended to become distracted by problems involving one or two children, and became inattentive to the rest. Some principals remarked that aides assigned to patrol halls and yards were hostile toward the students and that this hostility had exacerbated the problem of maintaining order. Others indicated that aides stood by and did relatively little to enforce rules of conduct. Several remarked that at the rates the Board of Education was paying, it was not possible to attract enough high quality applicants for these positions. The public, and perhaps the Board of Education, did not sufficiently appreciate the complexity of some of these "routine" supervisory functions. As one elementary school principal remarked, "Supervising the lunch room is extremely important in an elementary school. You have to ensure that 125 kids, some as young as five, can eat safely in 20 minutes. This takes skilled people. Aides at $12 an hour don't do it."

Without criticizing their aides, other principals observed that relieving teachers of these non-instructional duties meant that teachers and students were no longer involved in many of the positive informal interactions that the previous system fos-

tered, and that aides had proven to be no substitute for teachers in this respect. They are not viewed in the same way as teachers, and their exchanges with students lack the significance of interactions with teachers.

Principals also expressed some disappointment with the professional activities that teachers selected in lieu of these duties. As one remarked, he could not require faculty to participate in activities that might correct their weaknesses as instructors. Instead, he was required to honor their choices, however little the activity might do to improve their performance. Another noted that teachers frequently picked the least taxing items on the menu. Some put forth little effort even in these activities. Although this principal had contemplated monitoring what teachers were doing and putting letters in the files of those who were essentially wasting time, given the absence of specific criteria for evaluating these professional activities she felt she would lose when her complaints were grieved. As a result, provision of an official "professional activity" period had done little to improve her school. Teachers who were productively involved in these kinds of activities before the new contract was negotiated merely continued their involvement, while those who were not found make-work to occupy themselves. Some showed a total disregard for the purpose of the policy, as in the case of one teacher whose professional activity consisted of attending meetings of the school planning committee, where he read the newspaper.

Principals also believed that the SBO alternative, while helpful, is a cumbersome process that frequently failed to serve the best interests of students. As several pointed out, the requirement that 75 percent of voting teachers approve any SBO permits a minority to block measures that most teachers approved. Sometimes the opposition appears to materialize for no other reason than a conviction that "the union had worked too long to achieve this for us to give it up." This argument is used to prevent teachers who are willing to patrol school yards, monitor lunch rooms, and shoulder similar responsibilities, from doing so.

The SBO also places inordinate demands on principals' time and energy. Each non-instructional position requires its own SBO waiver. Each has to be approved by a 75 percent vote every year. This requires that principals devote a good deal of time and attention to lobbying their staffs for support. Principals speak of the need to placate teachers, to "play games" in order to make collaboration work. Even then they are concerned that a change of one or two votes could threaten school order and safety. Moreover, because an SBO must be approved the spring of the preceding year, schools lack the flexibility to respond to new and unforeseen needs.

Teamwork

Schools function best when teachers, administrators and other staff work together as a team. Effective teamwork requires adjustments and concessions from all participants to promote the common goal of educating students. By specifying in rigid terms the hours and conditions of teachers' work, the collective bargaining agreement between the Board of Education and the UFT has made it more difficult for principals to elicit the necessary

cooperation from their faculties. In some schools, principals and teachers work well together despite the contract. In others, where the principal and the UFT chapter leader are at odds and teachers insist on abiding by the letter of the contract, principals find the contract an impediment to changes that would benefit students.

Rigid Work Schedules Limit A School's Teamwork

The contract specifies a work day for teachers that is six hours and 20 minutes long.[32] This is exactly the same time that students are to be at school. Teachers are therefore permitted to enter their classrooms at precisely the same time as their students and to leave when students do. Teachers need not make themselves available to students who want to talk to them before or after school hours. They need not be in the classroom to maintain order as students arrive in the morning before school or return from lunch. They can time their coming and going to avoid meeting administrators outside the six hour and 20 minute day. As one principal remarked, "I can't find teachers even ten minutes after school lets out to discuss something."

New York City teachers are expected to attend one faculty meeting per month of 45 minutes duration.[33] Attendance at additional meetings is voluntary. Several principals observed that this was not enough time.

> I feel restricted in getting staff together for meetings. In business if I needed to conduct a team meeting, I would just call it. We are constrained in the number of meetings, confined to one official meeting per month. I have a good staff and have been able to work around it. But I was not so lucky in the past.

Requests that teachers voluntarily participate in additional meetings are often resisted by the union.

> Teachers not only refuse, they also approach others, saying: "Don't do it. This is a hard-won right. Don't go against the contract." Often they are successful in influencing others, especially newer teachers, even though some of the newer teachers actually want to meet more often for guidance.

Similarly, when another principal attempted to set up voluntary conferences with parents, the union chapter leader sought to discourage teachers from volunteering.

In the view of some principals, the limitation on faculty meetings does not allow enough opportunities for staff development. One proposed increasing instructional time by three to four minutes per day, thereby freeing up one Friday afternoon per month for professional development. The union would not even allow a vote on this proposal. Teachers who had initially expressed support for the idea backed off after they were approached by the union. Another principal mentioned that he had considered asking teachers to come after school hours voluntarily, but that most would not attend. Moreover, those in greatest need of staff development were the most resistant to coming in beyond the contractual minimum. As a result, "We have less staff development than a worker in an auto plant."

The contract stipulates that teachers in junior and senior high schools are to spend no more than three consecutive class periods teaching.[34] This can conflict with block scheduling, wherein students remain in the same group with the same teachers for an extended

part of the day. One alternative high school that sought to establish a full-morning block, from 8 to 11:45, was able to do so only under the School-Based Option (which required, as always, approval by 75 percent of the voting teachers each year). As the principal remarked, even this kind of restructuring would be a major effort for most schools.

Rigid limits on the work day make it difficult to deal with problems as they arise in the course of a school year. Because principals' authority to alter teachers' schedules is limited, to elicit the necessary cooperation principals often pay teachers a per session rate to take responsibility for extra work during the school day. The practice is a violation of Board of Education policy, which does not permit payment of per session fees (intended to compensate teachers for leading extra-curricular activities) for other kinds of work done during school hours. Thus it is necessary to falsify teachers' time sheets in order to make these payments. In the words of the principal who described this practice:

> I don't know a school in the system that hasn't done this. It allows you to buy your way out of a box. Of course, now the teachers have you, since you're violating the by-laws of the Board of Education by signing a false time sheet and they know it. But due to the lack of flexibility, the alternatives are to break the law or have the system come to a halt.

Other Clauses Also Limit Teamwork

Like many contracts negotiated by teachers' unions throughout the country, the agreement between the Board of Education and the UFT puts limits on class sizes: 32 in elementary schools, 33 in junior high schools, 34 in senior high schools, with lower limits in schools serving Title I students and for certain types of classes (for example, shop).[35]

Although it may seem that these limits are no more than what a wise policy would prescribe, writing them into the contract deprives administrators of the flexibility to exceed them when special circumstances arise. One high school principal described what happened when she attempted to exceed the class size limit in order to place additional students in an honors class. The teachers of the honors courses were willing to take the extra students and wrote letters supporting this decision. Nonetheless, the union filed a grievance, taking its usual position that individual teachers cannot be permitted to renegotiate the contract. The upshot was that the class size restriction was respected; the students in question were returned to regular classes.

This was not an isolated incident. The principal of an intermediate school told a similar story. The union insists that limits on class size be maintained even when all parties recognize that as a result of variations in attendance the actual number of students in class on a given day never exceeds 30: "Once enrollment hits 34 on paper, the union targets the class for equalization."

The contract guarantees teachers a certain number of preparation periods during the week. (In junior high schools, for example, the number is five.) In the words of the contract:

> "Preparation periods" are those periods during which the teacher is not assigned to a regularly programmed responsibility. Teachers are expected to utilize their professional preparation time in such manner as to enable them to further their professional work for the purpose of their greater classroom effectiveness.[36]

In reality, teachers can use prep periods as they want. In the words of one principal, prep period has evolved into free period. Another mentioned that he could not compel a teacher to prepare during prep period: "They can sleep if they want."

Two of the principals interviewed for this study mentioned that they had concerns about teachers' dress. At one intermediate school, some teachers were coming to work in jeans and overalls. (Students at the same school are required to wear uniforms.) Yet the UFT resisted the principal's demands that teachers "present themselves professionally." In another case, a new elementary school teacher was coming to school in jeans, a t-shirt, and sneakers. The principal believed that her dress was losing her the respect of some students. But he was unsure whether to speak to her about it for fear his words would be misconstrued and that other teachers would think that he was attempting to impose a dress code: "There is a perception that it isn't the place of the principal to comment on things like dress, coming late, etc. All of this undermines the supervisor's role in subtle ways."

These kinds of issues can arise in any workplace, of course, and should not be attributed solely to the influence of the union and the contract. However, in the judgment of several principals, the union has been to blame for promoting an "us versus them" outlook that leads teachers to put their relations with their co-workers ahead of the interests and welfare of students. This is particularly troubling when teachers preserve an official silence about the misconduct of their colleagues. Because principals learn of these incidents only through information shared in confidence, they are unable to document them, let alone take the disciplinary measures called for.

> Hard-working, caring teachers will privately say, "Such and such is happening, but you can't use my name." I'm trying to change this culture. If peer pressure doesn't work, then I need to take more formal action, for which I need the cooperation of teachers who are now protecting their colleagues. The union is related to this attitude.

The Contract and the Future of Education Reform

The preceding discussion may have created the impression that the principals interviewed for this study were uniformly hostile to the teachers' union and that they saw no merit in the contract. This was not the case. Some had worked in the district as teachers before the UFT negotiated its first contract and remembered abuses under the old system that led teachers to organize. One mentioned safeguards in the contract that she felt were important to preserve. Several indicated that there was enough flexibility in the system to work around the contract: with sufficient administrative skill and luck (e.g., a cooperative UFT chapter leader), a talented principal in the New York City public schools can still manage to have a significant, positive impact on the direction of the school and the achievement of the students who attend it. Some principals (though none who were interviewed for this research) even go so far as to say that the contract is not an impediment at all, that there are always ways to finesse its provisions.

In some instances this may be true. But it is unwise to judge the system-wide impact of the contract by the achievements of a few exceptional administrators in fortunate circumstances. This was acknowledged in a particularly revealing manner in the course of an interview with the principal and UFT chapter leader of a Manhattan elementary school

(the only one of the interviews at which the union representative was present). Both the principal and the chapter leader stressed the importance of cooperation, and to all appearances, they had a remarkably good working relationship. When asked about problems the contract created for school management, they avoided a direct response and returned again to the importance of collaboration and shared decision-making. Finally, to shift the focus from their own school, I mentioned the issue of charter school policy and asked in what ways it might benefit charter schools not to be covered by the UFT contract. Immediately, almost in unison, both the principal and the chapter leader replied: "Freedom to hire and fire"—the very issues that most concerned the other principals interviewed for this study.

Defenders of the contract will sometimes admit that it occasionally prevents administrators from making decisions that would improve school performance. They argue, however, that this is a necessary trade-off to protect employees' rights and that on the whole public education is better off because of contract safeguards: abuses of authority are prevented that would otherwise discourage good teachers from working in the system and that would make it more difficult for teachers who remain to function effectively. Whatever validity this argument may once have had, it is less clear that it remains relevant today. The picture of a school principal as an autocrat who must be restrained by a collective bargaining agreement is out of date. Principals are under pressure as never before to deliver results. Job protections such as tenure are being removed. In New York City, as elsewhere, policies are being shaped that will hold principals accountable when students fail to perform to acceptable levels on achievement tests. In this environment, an administrator who antagonizes his staff and diminishes their effectiveness through autocratic, arbitrary behavior does so at his own peril.

Several principals made this point when addressing the possibility that charter schools may not be covered by the contract.[37]

> A charter doesn't mean the principal will act autocratically. Instead, it gives you the freedom to use cooperative management more flexibly. Groups will form and dissolve to decide particular policies. This is a reasonable way to have collective input without autocracy. While you will do some things even without the contract that the contract now calls for, there are other areas where more managerial flexibility is needed: how to use prep periods, cover lunch hours, provide professional development. Everything can't be a teacher's choice, covered by contract language, if the school is to run.

As another principal said, "If a school is not at least partially teacher-run, it's going to be a dismal place." Even in the absence of a contract, good administrators will choose collaborative management practices because they are effective.

In some respects the contract actually inhibits collaboration. Principals frequently referred to a "tyranny of the minority" under the School-Based Option, in which 25 percent of the voting staff can block reforms supported by the rest. Other innovations have been held up by excessive concern for the letter of the contract, as described above.

Precisely because cooperation is in the interests of good administrators and teachers, promoting collaboration is not the greatest challenge for public policy. Rather, the greater challenge is to ensure accountability so that administrators and teachers alike have incentives to adopt the best educational practices. Current efforts to hold administrators respon-

sible for educational outcomes will fail to achieve the intended results if administrators are not given more authority over critical personnel decisions. Without authority there can be no genuine accountability. Or, as several principals said, if the teachers' union is to share in school-based decision-making, then it must also share in being held accountable for outcomes. By extending more power to UFT chapter committees and other committees dominated by the union, while at the same time preserving teachers' strong job protections, the contract perpetuates a situation in which authority is divided, lines of responsibility are unclear, and reforms can be stalemated as various interest groups check one another.

Unfortunately, this seems to be the present trend of educational policy, as reflected in other initiatives, such as the establishment of school leadership teams. These teams, composed of equal numbers of parents and school staff, are charged with developing long-term educational plans and school budgets. The Chancellor has praised these councils as mechanisms for ensuring collaboration *and* accountability.

> Accountability is demanded equally of every member of each school leadership team and of every person who works within the school system. In this context, the Chancellor is as accountable as a classroom teacher, and a manager in the Division of Human Resources is as accountable as a principal. Every staff member, parent, union representative, or community member is responsible for making the best possible contribution, within the definition of his or her role, to improving the delivery of instruction to students.[38]

This statement is a triumph of good intentions over clear thinking. Nowhere in the document describing this policy is it explained how parents are to be held accountable. Indeed, they cannot, as parents are not employees of the Board of Education and cannot be disciplined for their actions. Nor is there any mechanism for holding teachers responsible. Principals are the only employees whose job evaluations will be affected by the activities of the leadership team. Although the Chancellor's document recognizes that "the principal is in an untenable position if he or she is held solely accountable for decisions of a team," there is no provision for assigning responsibility to anyone else. Yet by diminishing the principal's authority, the establishment of school leadership teams moves the system in the direction of less accountability, not more.

School leadership teams are part of a broader set of initiatives intended to make the school system "performance-driven." To achieve this objective, the current Chancellor and Mayor also seek the elimination of tenure for principals, so that the Chancellor and superintendents can demote or dismiss those who are ineffective. While this appears to be a step in the direction of enhanced accountability, it is more apparent than real if principals do not also receive the authority to make key personnel decisions and to manage their schools as they deem necessary. In the words of one principal, "I don't want tenure, not for me, not for anyone. We should be judged on doing the job." Unfortunately, the outlook for reforms that would establish this kind of accountability is not good.

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Notes

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The assistance of these individuals should not be construed as an endorsement of the views expressed in this paper. Responsibility for any errors is mine alone.

[1]Bruce S. Cooper, Teacher Unions, Politics, and Organizational Adaptation, a paper prepared for "Teacher Unions: New Developments and Perspectives," a conference sponsored by the John F. Kennedy School of Public Affairs, Harvard University, September 23-25, 1998, p. 1. Citations to the literature in the original have been deleted.

[2]This characterization of the contract was offered by Randi Weingarten, President of the UFT, at a meeting to discuss this report on January 5, 1999. Examples of such reforms include the Peer Intervention Program, initiated in 1987 to upgrade the performance of the system's weaker teachers, and as an alternative to the traditional method of teacher evaluation, that required the teachers to formulate personal plans for professional growth and be judged on the basis of progress toward these goals.

[3]Steven F. Wilson, Reinventing the Schools: A Radical Plan for Boston, Boston, MA: Pioneer Institute, 1992; Howard Fuller, George Mitchell and Michael Hartmann, The Milwaukee Public Schools' Teacher Contract — Its History, Content and Impact on Education, Milwaukee, WI: Institute for the Transformation of Learning, Marquette University, 1997; La Rae G. Munk, Collective Bargaining: Bringing Education to the Table, Midland MI: Mackinac Center for Public Policy, 1998.

[4]All of these principals have been involved with the Center for Educational Innovation, a non-profit organization that seeks to promote educational reform by shifting control from centralized bureaucracies to local schools. Funding for the center comes from various private foundations, including the Annenberg Foundation.

[5]Agreement Between the Board of Education of the City School District of the City of New York and United Federation of Teachers Local 2, American Federation of Teachers, AFL-CIO Covering Teachers, 1995, pp. 127-128 ("Agreement").

[6]Agreement, Article Eighteen (Transfers and Staffing), pp. 116-121, and Article Seventeen (Retention, Excessing, and Layoff), pp. 107-115.

[7]In the past, teachers were not permitted to transfer unless they had served five years in their current schools. This requirement is being phased in under the current contract. Additional rules limit the number of teachers who can transfer from a given school or who teach the same subject in a single school.

[8]Data furnished by Gary Barton of the Division of Human Resources of the Board of Education. These numbers are expected to rise as the current contract phases out the requirement that teachers spend at least five years in their current school before they are eligible to transfer.

[9]Agreement, p. 117.

[10]Agreement, pp. 120-121.

[11]Agreement, p. 121.

[12]Agreement, p. 120.

[13]Data on the SBO transfer and staffing plan furnished by Gary Barton of the Division of Human Resources of the Board of Education.

[14]This analysis of the SBO transfer and staffing plan draws on an on-going study by Gary Barton.

[15]"Teachers on probation who have completed at least three years of service on regular appointment in the school shall be entitled, with respect to the discontinuance of their probationary service, to the same review procedure as are established for tenured teachers under Section 3020-a of the Education Law." (Agreement, p. 129).

[16]The rating and review process is described in New York City Board of Education, Regulations and Procedures for Pedagogical Ratings, 1997.

[17]Agreement, p. 142.

[18]In fact, the portion of the personnel file containing evaluations of performance does not travel with teachers who transfer within the system but remains at the old school, effectively under seal. Without defending this policy, the Executive Director of Human Resources for the Board of Education offered the following rationale. Because no teacher may transfer under the UFT transfer system who has not received satisfactory ratings each of the previous three years, the file at the former school ought not to contain

material showing the teacher is currently unfit to teach. Items in the file that reflect unfavorably on the teacher's ability will date from an earlier period in the teacher's career and should not be considered relevant in evaluating current performance. However, this is not always true: more than 99 percent of teachers in the system are rated satisfactory, including many whose files contain letters that reflect negatively on their performance. Excluding this information denies the hearing officers any opportunity to decide whether it is relevant.

[19]Agreement, p. 130.

[20]Data on 3020-a proceedings were supplied by the Office of Legal Services of the Board of Education.

[21]Data from the Office of Appeals and Review of the Board of Education. These data reflect only the number of unsatisfactory ratings that are appealed: the total number of teachers rated unsatisfactory is unknown. However, a 1990 review of practices in the school system found that 99.7 percent of teachers were rated satisfactory, as reported in James Gill, et al., Findings and Recommendations of the Joint Commission on Integrity in the Public Schools, 1990, p. 178. From the comments of the principals interviewed for this study, it is doubtful that this figure has changed very much.

[22]Evaluating a teacher requires, in addition to each formal classroom observation, a pre-observation conference, a post-observation conference and written comments on the teacher's performance.

[23]NY State Education Law, Title 4, Article 61, Section 3020-a.

[24]Ibid.

[25]Michael Mazzariello, personal communication.

[26]Edwin M. Bridges, The Incompetent Teacher: Managerial Responses, Philadelphia: Falmer Press, 1992, p. 24.

[27]Agreement, p. 31.

[28]Agreement, pp. 18-19.

[29]Agreement, p. 20.

[30]The one exception is home room. If the faculty approves an SBO establishing home rooms (in a junior or senior high school), faculty can be assigned to staff these positions involuntarily. However, they must rotate.

[31]Some compensatory time positions can be recreated by an agreement of the principal and the UFT chapter committee. They are deans, crisis intervention teachers, programmers,

grade advisors, and, for high schools, attendance coordinators. Other compensatory time positions must be established through the SBO mechanism.

[32] Agreement, p. 17.

[33] Language limiting faculty meetings to 45 minutes per month does not actually appear in the contract. Instead, it is a Board of Education policy. However, by Article 20 of the contract, "Matters Not Covered," the Board must negotiate any change in this policy with the union. Thus it is effectively fixed by the contract. Certainly it is perceived that way by principals. Even high-ranking officials of the Board of Education were surprised to learn that the policy on faculty meetings was not actually in the contract.

[34] Agreement, p. 24.

[35] Agreement, Article 7, pp. 17-51.

[36] Agreement, pp. 26-27.

[37] Under the recently-passed charter school law, schools with fewer than 250 students are not required to abide by union contracts. The decision is left to a vote of the faculty of each school.

[38] Board of Education of the City of New York, The Chancellor's Draft Plan for School Leadership Teams, September, 1998, p. 43.

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